

CALIFORNIA LITIGATION:

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By Robert S. Gerber

— Civility: On the Road to Recovery —

Nearly five years ago, I wrote an article for this very publication on what I perceived to be an ever increasing state of incivility among lawyers. Since that time, I have spent innumerable hours in further depositions, trials and other proceedings with lawyers from around the state. Moreover, as a partner in a large law firm, as Chair of the Litigation Section and as a lawyer with a keen interest in issues of professionalism and civility, I have spoken frequently with other lawyers and judges about the problem. Based upon my observations and those of many others, it appears that civility is on the road to recovery.

In my 1995 article, R. Gerber, "'To Abstain from All Offensive Personality': Uncivil Lawyers," *California Litigation* (Vol. 9, No.1, Fall 1995), I recited a number of phenomena that might constitute causes of our civility crisis. They included the changing economics of the law; the lack of appropriate direction or training of young lawyers; the "Hollywoodization" of lawyering and the increasing control of lawyers by their clients; unsatisfactory bench/bar relations; the growth in legal malpractice claims and sanctions motions; and the lack of any meaningful civility enforcement mechanisms. I also offered a number of suggestions for how we might improve civility and professionalism, including increased professional activities; training and supervision of younger lawyers; educating clients about our right and duty to act professionally; conducting our own practices in accordance with aspirational goals of professionalism; and avoiding unmeritorious claims and accusations against other lawyers.

It has become more apparent to me now that these curative measures can have a meaningful impact on a legal community's relationships. In San Diego, where I practice, lawyers seem to be getting along better. The economics of law still drive us to work longer hours; we still suffer sanctions motions, legal malpractice actions and the occasional gruff jurist; and we have gone from the unrealistic *L.A. Law* to the surrealistic *Ally McBeal*. But, to put it as plainly as I can, I am simply having more fun out there and other lawyers and judges tell me that they are too. I am seeing better communication among opposing counsel, more flexibility in scheduling and discovery, more frequent use of alternative dispute resolution and an improved tone and demeanor in depositions and the courtroom.

There are some objective indications of this increasing positive attitude toward professionalism. For example, the various Inns of Court in San Diego — voluntary organizations that allow lawyers and judges of all experience levels to engage in fellowship and educational activities, including the promotion of civility — are doing exceptionally well. They are growing in size and number and their impact is being felt in our legal community. Similarly, the various voluntary Sections of the State Bar, after suffering membership declines due to the mandatory State Bar "funding crisis" are again gaining members. The Litigation Section in particular views one of its primary goals as the promotion and maintenance of ethics and civility among California litigators and this publication is one method of education that assists in that goal.

This is not to say that we have solved the crisis. In an editorial in the September 20, 1999 *National Law Journal* entitled "Be Civil? I'm a litigator!", an Illinois trial lawyer described various local bar groups' civility committees as "stalking horses for legal wimpery." He actually argued that "only the rules should constrain a lawyer's drive to win, not some notion that you're supposed to like the person you're paid to beat." There is not enough room in this brief editorial opinion to outline all of my disagreements with his position, let alone debate them. Nonetheless, I know it is entirely possible to both win a lawsuit and be civil to your opponent. It is what I strive for every day.

In my view, through the efforts of groups like the Litigation Section and the Inns of Court, civility is improving. If you are not "having fun out there," try becoming a member of an organization like the Litigation Section. Attend some of our programs and meet the other lawyers and judges in your community "outside of the courtroom." I bet you'll even like some of them. Winning and being civil at the same time is certainly hard work, but the fruits of hard work are always the sweetest.

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The journal is sent free to members of the Litigation Section.

The Litigation Section

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